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From:	Presidency
To:	Working Party on Financial Services and the Banking Union (Payment Services/ PSR/PSD) Financial Services Attachés

Subject:	Presidency Discussion Note - Open Banking, SCA, ADR procedures, enforcement
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Polska Prezydencja w Radzie UE
Polish presidency of the Council of the EU
Présidence polonaise du Conseil de l'UE

Payment services package proposals (PSD3/PSR)

Brussels, 28 January 2025

Presidency Discussion Note

Discussion on PSR

(Open Banking, SCA, ADR procedures, enforcement)

The lengthy discussions on the Payment Services Regulation file, especially regarding some of the provisions – in the view of the Presidency – clarified certain positions of the Member States in the EU Council. Therefore, in the view of the Presidency, it is important to present and summarise this position.

Background

The Polish Presidency would like to confirm the positions of the Member States on certain provisions of the PSR, with a particular focus on Open Banking, ADR procedures, enforcement and strong customer authentication. On the basis of the previous discussions, held on 17 September 2024 and 15 November 2024, the Presidency has taken into account Member States' comments and presents the drafting on the aforementioned areas in a separate document.

The attached table with compromise drafting proposals contains the Commission's proposal, the Belgian Presidency's wording as included in the progress report and the compromise that is the result of the work of the Hungarian Presidency, supplemented by the amendments tabled by the Polish Presidency based on the outcome of discussions and written suggestions from Member States. In the view of the Presidency, the proposed compromise reflects the general position of the EU Council. The additional proposals beyond the Hungarian Presidency's are highlighted in red.

Open Banking (Articles 35-48 PSR and related recitals)

Based on the multiple discussions that have taken place during previous presidencies, the progress on the Open Banking provisions appears to be mature enough to be able to present a conclusive wording. The Belgian Presidency concluded with specific amendments to the Open Banking part. The Hungarian Presidency made considerable efforts to table further amendments to the text in order to clarify certain issues. Some of these amendments were supported by Member States, while others were not.

It is also important to clarify that Article 43 PSR on data access management by payment service users is not discussed in this Presidency Discussion Note, as the issue of interplay with the FiDA Regulation is dealt with in the Presidency Discussion Note on issues related to other regulations, where the interplay with the FiDA Regulation, is considered, among other matters.

Q1. Do Member States agree with the proposed drafting suggestions for Articles 35-48 PSR and related recitals?

Strong Customer Authentication (Articles 85-89 PSR and related recitals)

Member States did not provide many comments on these provisions, and in particular there were few comments containing drafting suggestions. Nonetheless, the Presidency has taken account of the comments received and has proposed slight amendments to the provisions.

As regards Article 85(1)(d) – the Presidency wonders whether Member States might agree that the examples proposed in this article would be better placed in the recitals and not in Article 85 as previously proposed.

Furthermore, some Member States indicated that subparagraph c1) of Article 85(1) may not be really necessary and that the creation or replacement of a token of a payment instrument via a remote channel could be included in the already existing subparagraph d), considering it is a remote action that may imply a risk of payment fraud or other abuses.

With regard to Article 85(12) PSR, although this provision was included in the Belgian Presidency's progress report, the recent discussions during Council Working Party meetings indicated a shift in Member States' positions on this issue. Some Member States are of the view that more than one element from the "inherence" category may be allowed. In the opinion of these Member States, this would boost innovation.

Taking into account the recent proposal of the Hungarian Presidency and the questions of some Member States as to what the "independence" between the SCA elements actually means, the Presidency proposes to clarify in the recitals that such independence indicates that elements are sufficiently independent if the use of strong customer authentication elements is subject to measures ensuring that, in terms of technology, algorithms and parameters, the breach of one element does not compromise the reliability of the other elements.

The approach presented is fully in line with Article 9 of Commission Delegated Regulation (EU) 2018/389 of 27 November 2017 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards for strong customer authentication and common and secure open standards of communication.

Q2. What is the view of Member States on the Presidency's considerations regarding Article 85(1) PSR?

Q3. Do Member States agree with the approach of allowing at least two elements belonging to the inherence category in order to preserve innovation? Would the proposed explanation in the recital be sufficient to address the notion of elements' independence?

Enforcement and ADR procedures (Articles 90-103 PSR)

As the issue of enforcement did not trigger significant views from individual Member States likely to be shared by others, the Presidency does not propose significant amendments in this area, seeking the confirmation of Member States on the outcome so far achieved.

Based on previous discussions and on the Hungarian Presidency conclusions presented in the Discussion Note of 15 November 2024, it is evident that the issue of ADR procedures is regarded differently across Member States. The current version allows any interested Member State to make ADR mandatory at national level. It can be implemented in the context of national legislation and is in line with the general rules on ADR. On the other hand, if Member States do not wish to implement mandatory ADR at national level, this is also possible, as EU legislation does not make adoption mandatory.

Q4. Do Member States agree with the proposed drafting suggestions to Articles 90-103 PSR?